IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

MFA.No. 216 of 2002(E)

OPMV.730/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PERUMBAVOOR
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APPELLANTS: PETITIONERS
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1. **SISILY M.K., W/O. LATE AUGUSTINE MYNATTIPARAMBIL HOUSE, WEST KORATTY,MAMBRA P.O., (NOW RESIDING AT RESIDENCE NO.VI/15,EDASSERY HOUSE KANJOOR P.O.,WESTERN STREET, ERNAKULAM DISTRICT.**

2. **SAJI AUGUSTINE, S/O. LATE AUGUSTINE, DO.**

3. **JINCY AUGUSTINE @ JANCY AUGUSTINE, D/O. LATE AUGUSTINE, DO.**

4. **JUSTINE AUGUSTINE, S/O. LATE AUGUSTINE, DO. DO.**

5. **M.V.DEVASSY, F/O.LATE AUGUSTINE, DO.**

6. **ROSA,M/O. LATE AUGUSTINE, DO.**

BY ADV. SRI.JOSE THETTAYIL

RESPONDENTS: RESPONDENTS
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1. **MR.K.T.XAVIER, KOTTAPURAM HOUSE, VALLOOR, CHERUVALOOR P.O., PIN 680 321.**

2. **M.R. K.X.VARGHESE, S/O. K.T.XAVIER, KOTTAPURAM HOUSE, VALOOR, CHERUVALOOR P.O. PIN 680 321.**

3. **THE UNITED INDIA INSURANCE CO.LTD., CHALAKUDY 680 307.**

BY ADV. SRI.MATHEWS JACOB - R3
SRI.BABU CHERUKARA
SRI.P.JOSHY JOSE .P.
SRI.E.V.RAPHEAL R1

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 216 of 2002

Dated this the 30th day of May, 2007

Judgment

Koshy, J.

A police constable at the age of 46 died in a motor accident and his dependents, namely, wife and three children and parents together filed an application for compensation claiming an amount of Rs.5,73,000/-. The tribunal found that the accident occurred due to the negligence of the driver of the offending vehicle insured by the third respondent insurance company and insurance company is liable to pay the amount. However, total compensation awarded by the tribunal was only Rs.3,39,580/-. The accident occurred on 19.1.1995 and after two days' of agony and treatment, he died on 21.1.1995. Loss of dependency compensation awarded was only Rs.2,62,080/-. Only contention raised before us was that the quantum of compensation awarded was too low.

2. The deceased was a serving police constable in the Kerala Police Department. His basic pay, as evidenced from Ext.A10 issued by the Police Department, is Rs.1,560/- in the scale of pay of Rs.1200-30-1560-40-

2040. Apart from the above, he is entitled to dearness allowance and other allowances. The tribunal correctly found that Rs.3,640/- was the salary drawn by him at the time of accident. Considering the age, the tribunal has taken 13 as the multiplier. From Rs.3,640/- one-third was deducted and for nine years the above multiplicand was used and compensation was calculated. Then, only Rs.1,500/- was taken on the ground that after the age of 55 he will get pension and multiplier of 4 was used. It is the contention of the claimants that the above calculation is unscientific and unreasonable. It is submitted that he was a Government employee. Apart from the possibility of getting promotion and revision of salary, even if he had continued in the position as a police constable, he would have got annual increments etc. Claimants also produced a certificate, Ext.A1, issued by the District Police Office, Thrissur to the effect that if he had continued in the service on 11.10.2000 his total emoluments would have been Rs.8,235/- in the basic pay of Rs.5,625/- and dearness allowance of Rs.1800/- and other allowances. It is settled law that while calculating compensation, future prospects also should be considered. (See: KSRTC v.

Susamma Thomas (1994 (1) KLT 67 SC) and Abati Bezharuch v. Deputy Director General of Geological Survey of India and another (JT 2003 (5) SC 205). It is also submitted that even though he is liable to be retired at the age of 55, after retirement he can get other job as security officer etc. and, therefore, pension will not be taken as the only emoluments. He left behind his wife aged 41 and three young children apart from parents. It is the contention of the appellant that considering future prospects etc. a higher multiplicand should be used. It is true that deceased was aged 46 at the time of death. Under second schedule, for death of a person below the age of 45 and 50, multiplier is 13. In this connection, we refer to the decision of the Apex Court in Jyoti Kaul and others v. State of MP and another (JT 2000 (7) SC 367). Multiplier must be taken as far as possible as per second schedule as held by a three-member Bench of the Apex Court Smt.Supe Dei and others v. M/s. National Insurance Co. Ltd. and another (JT 2002 (Suppl.1) SC 451). Here, tribunal has taken 13 as the multiplier. We see no ground to interfere in the same in an appeal proceedings. We note that vagaries of life cannot be predicted. At the same time, we agree that if petitioner

had continued in employment, he would have got much higher amount and after the retirement, he could have got other job also and got pension on the basis of the last drawn salary. But, for the purpose of calculation, we accept Rs.3,600/- as the monthly income and after deducting one-third, Rs.2,400/- will be the dependency compensation. 13 will be the multiplier for calculating the compensation. If that be so, compensation payable will be Rs.2,400 x 12 x 13 = 3,74,400/-. Therefore, claimants are entitled to get an additional sum of Rs.1,12,320/-. Third respondent insurance company is directed to deposit the above amount of Rs.1,12,320/- with 8% interest from the date of application till its deposit. Out of the amount deposited, Rs.7,500/- each shall be released to appellant Nos.5 and 6 father and mother of the deceased and Rs.20,000/- to the first appellant widow. The entire balance amount should be disbursed to appellants 2 to 4 in equal proportion.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A. NO.216/2002

JUDGMENT

Dated:30th May, 2007